

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH JOHNSON and EDMOND
JOHNSON, SR.,

UNPUBLISHED
August 10, 1999

Plaintiffs-Appellants/
Cross-Appellees,

v

No. 209284
Wayne Circuit Court
LC No. 96-614615 NH

HEGIRA PROGRAMS, INC., a/k/a OAKDALE
RECOVERY CENTER, d/b/a/ PSYCHIATRIC
INTERVENTION CENTER,

Defendant,

and

RAO VALLABHANENI, M.D.,

Defendant-Appellee/
Cross-Appellant.

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition of plaintiff's¹ malpractice claim. Defendant cross-appeals challenging various trial court rulings regarding statutory interpretation. We affirm.

Following a suicide attempt, plaintiff arrived at Psychiatric Intervention Center ("PIC"), which evaluates individuals in states of psychiatric crisis and then refers them to an appropriate treatment facility. Plaintiff was evaluated by defendant, who recommended further in-patient treatment. After plaintiff's evaluation, defendant examined Paul McClendon. McClendon was classified as an assault/escape risk based on threats made to his family members and his thoughts of harming himself or others. After defendant evaluated McClendon, he did not change McClendon's status as an

assault/escape risk, and determined that McClendon required further in-patient treatment. Defendant allegedly sent plaintiff and McClendon to the same lounge area to await transfer to another treatment facility. While plaintiff and McClendon waited, McClendon allegedly assaulted plaintiff. Plaintiff filed this malpractice action asserting that defendant breached the applicable standard of care/duty to protect her. The trial court granted defendant's motion for summary disposition, holding that defendant complied with his statutory duty to warn by initiating hospitalization proceedings with respect to McClendon.

Plaintiff contends that the trial court erred in applying MCL 330.1946; MSA 14.800(946). The statute provides that a mental health professional has a duty to warn reasonably identifiable third parties of a threat of physical violence by a patient. In enacting MCL 330.1946; MSA 14.800(946), the Legislature failed to define "reasonably identifiable third parties." Plaintiff maintains that the trial court erred in holding that she was merely a third person under the statute because of the special physician-patient relationship between plaintiff and defendant. Defendant also raises on cross-appeal various arguments concerning the trial court's interpretation of this statute. A proper disposition of this case, however, does not require analysis of this section. Even assuming, as plaintiff argues, that the trial court incorrectly applied the statute to bar plaintiff's claim, summary disposition of plaintiff's malpractice claim is nonetheless appropriate pursuant to MCR 2.116(C)(10) because plaintiff did not establish a genuine issue of fact regarding defendant's alleged malpractice.

Plaintiff claims that the trial court erred in granting summary disposition because the affidavit of plaintiff's expert, Dr. Emmanuel Tanay, created a factual question regarding whether defendant satisfied the applicable standard of care. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions and other documentary evidence available to it and grant summary disposition if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. This Court reviews summary disposition decisions de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Hughes v PMG Building, Inc*, 227 Mich App 1, 4; 574 NW2d 691 (1997).

The duty to protect others against harm from third persons is based on a relationship between the parties. A duty of reasonable care may arise where one stands in a special relationship with either the victim or the person causing the injury. *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). Michigan has recognized psychiatrist-patient and doctor-patient as special relationships. *Id.* Therefore, defendant's relationship with plaintiff as an evaluating psychiatrist creates a duty of reasonable care on the part of defendant.

In *Wischmeyer v Schanz*, 449 Mich 469, 484; 536 NW2d 760 (1995), the Supreme Court set forth the elements of a medical malpractice action.

In a medical malpractice case, the plaintiff bears the burden of proving: (1) the applicable standard of care, (2) breach of that standard by defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury. Failure to prove any one of these elements is fatal.

With respect to the applicable standard of care, the Legislature has provided as follows:

[I]n an action alleging malpractice, the plaintiff has the burden of proving that in light of the state of the art existing at the time of the alleged malpractice:

(a) The defendant, if a general practitioner, failed to provide the plaintiff the recognized standard of acceptable professional practice or care in the community in which the defendant practices or in a similar community, and that as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury. [MCL 600.2912a(1); MSA 27A.2912(1)(1).]

Michigan courts have long recognized the importance of expert testimony in establishing a medical malpractice claim, and the need to educate the jury and the court regarding matters not within their common purview. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994).

Defendant, PIC's program manager and PIC's shift supervisor explained the division of labor and patient treatment routine at the facility. The testimony of the program manager and shift supervisor established that PIC's attendants monitored patient activity and maintained order and safety in PIC's waiting area. Defendant testified that attendants brought patients to his office. On completion of an evaluation, defendant dismissed the patient and notified the attendants that the patient was leaving his office. Any orders concerning a patient were written and given to a nurse, who signed the order to reflect that the order had been read. Defendant testified that this procedure represented protocol established by PIC.

To establish the applicable standard of care and its breach by defendant, plaintiff presented the affidavit of Dr. Tanay. Dr. Tanay's affidavit concluded that the applicable standard of practice mandated that defendant issue written escape/assault precaution orders and communicate the orders to those who enforce them. Dr. Tanay opined that defendant could not rely on the escape/assault precautions previously issued by another psychiatrist. Dr. Tanay further opined that defendant had a duty to take any action necessary to protect plaintiff, including issuing a written order that attendants constantly monitor plaintiff. Dr. Tanay's affidavit, however, failed to present a sufficient foundation to establish that the applicable community standard of practice for a psychiatrist required that written orders issue on each visitation or meeting with a patient. Dr. Tanay conclusively stated that defendant's acts violated the standard of care, but he failed to distinguish between acts that constituted a breach of the standard of care by a psychiatrist as opposed to acts that constituted conformance with PIC's policies and procedures.

Dr. Tanay's conclusory allegations are insufficient to create a genuine issue of material fact. In *Quinto v Cross & Peters Co*, 451 Mich 358, 371; 547 NW2d 314 (1996), the defendant moved for summary disposition of the plaintiff's hostile work environment claim. In opposition to the motion, the plaintiff filed an affidavit stating that her supervisor continually harassed her and made "comments regarding my age, my sex, my national origin and my ability to speak English," without specifying the nature of the supervisor's statements. *Id.* at 367. The Supreme Court held that the affidavit did not satisfy the plaintiff's burden, as the opposing party, to rebut that no genuine issue of material fact existed:

Plaintiff's affidavit did not satisfy her burden as the opposing party; rather, it constituted mere conclusory allegations and was devoid of detail that would permit the conclusion that there was such conduct or communication of a type or severity that a reasonable person could find that a hostile work environment existed. [*Quinto, supra* at 371-372.]

In the instant case, Dr. Tanay's affidavit likewise failed to set forth specific facts to establish the applicable standard of practice, as opposed to defendant's alleged lack of compliance with PIC's policies and procedures.² Because Dr. Tanay failed to establish a foundation to support his conclusion that defendant breached the standard of practice, plaintiff failed to meet her burden in opposing defendant's motion for summary disposition. *Id.* at 372; *Wischmeyer, supra*. We will not reverse the lower court when it reaches the correct result, even if for the wrong reason. *Norris v State Farm Fire & Casualty Co*, 229 Mich App 231, 240; 581 NW2d 746 (1998). Given our conclusion that the trial court did not err in granting defendant's motion for summary disposition, we need not address the remaining issues raised by the parties.

Affirmed.

/s/ Hilda R. Gage

/s/ Michael R. Smolenski

/s/ Brian K. Zahra

¹ Because Edmond Johnson, Sr.'s claim is derivative of his wife Deborah Johnson's claim, we will use the term "plaintiff" to refer exclusively to Deborah Johnson.

² Dr. Tanay's affidavit also asserted that he had visited PIC's premises. He attested that, based on his observations, defendant should have known that PIC's personnel were young and inexperienced and that patients in PIC's smoking room were not under constant supervision. Dr. Tanay failed to specify the date of his visit. Therefore, it remains unknown whether the personnel present on the day of his visit were also employed at the time of plaintiff's alleged attack. Dr. Tanay also failed to specify the capacity in which the "young and inexperienced" were employed. Therefore, it is unknown whether the young and inexperienced employees were attendants in charge of patient monitoring.